Supreme Court, U.S.
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No. 08-1427

IN THE
Supreme Court of the United States

COREY ALAN BROCKMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The Government's opposition concedes virtually every element of the case for certiorari. In particular, the Government recognizes that "the courts of appeals are divided"—four to four—"over whether a district court has the authority to direct that a sentence run consecutively to a state sentence that has not yet been imposed." Opp. 4, 5-7. It "agrees with petitioner that district courts lack such authority under 18 U.S.C. 3584(a)." *Id.* at 4. It acknowledges that the Fifth Circuit has denied a petition to review this issue en banc. *Id.* at 13. And it does not deny that the order below *requires* petitioner to serve *two* additional years of imprisonment that the Bureau of Prisons (BOP) would otherwise have discretion to eliminate. *Id.* at 10-11.

The Government nonetheless opposes review on the ground that the question presented is not important. Opp. 8-12. But the Government's own actions demonstrate otherwise. The issue is important enough for the Executive Office of the United States Attorneys to issue specific advice to every U.S. Attorney on how to address it. *Id.* at 15. It is important enough that every U.S. Attorney must explicitly urge every district court in every case that it should not engage in the challenged practice. *Id.* at 16. And it is important enough that, in "appropriate case[s]," the Government will advise four circuits to grant rehearing en banc to reverse their decisions on the issue. *Id.* at 12. Despite all that, the Government turns around here and insists that the issue is not important enough for this Court, in a single (and plainly suitable) case, to simply bring an end to this

concededly unlawful practice. The Government's position not only lacks merit—it lacks credibility.

1. The Government argues that unlawful consecutive sentencing orders have no practical impact because state courts can circumvent them by cutting the length of the state sentence by the amount of the federal sentence. Opp. 8. But the Government fails to explain why state courts faced with federal court consecutive sentence "orders" would not feel either bound by them or compelled by considerations of comity to follow them.

To the extent that state courts try to circumvent the illegal orders, moreover, the result is unseemly gamesmanship that damages federal-state relations. As the Government views current law and procedure in four circuits, a federal court essentially attempts to trick a state court into ordering a consecutive sentence with an "order" that, while binding in appearance, actually lacks legal effect. The state court should then respond, the Government submits, by invoking available state-law means to circumvent the meaningless order. Opp. 8-9. That approach is patently incompatible with this Court's call for a "spirit of reciprocal comity and mutual assistance" between state and federal courts in sentencing. *Ponzi v. Fessenden*, 258 U.S. 254, 259 (1922).

The Government's proposed tactic for defeating illegitimate federal court orders also cannot work when state law imposes a mandatory minimum sentence. And cutting the state sentence by the length of the federal sentence would entirely defeat state sentencing objectives when the federal sentence is subsequently vacated because of an error in the pro-

ceedings or reduced because a defendant cooperated with federal authorities.

A system under which a federal court issues "orders" that are not binding also cannot be reconciled with the requirements of Article III. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218-19 (1995). And even if such ersatz orders are consistent with Article III, it nevertheless denigrates federal judicial power for federal courts to issue orders that can be freely ignored. Those harmful effects on the administration of justice easily justify review of a 4-4 circuit split on an issue on which the Government has confessed error.

2. This case illustrates an additional serious consequence of consecutive sentencing orders that heightens the need for review: they illegally deprive persons like petitioner of the opportunity to petition the BOP to make their federal sentences concurrent with the time they have served in state prisons. The effect on petitioner is palpable. The unlawful order here requires petitioner to serve two extra years of imprisonment that the BOP would otherwise have had discretion to eliminate. And that same effect is experienced by the entire class of persons who serve their state sentences before being transferred to federal custody.

The Government argues that this effect is no cause for concern because not many inmates would likely obtain relief from the BOP. Opp. 11. But that is pure speculation; the Government offers not a shred of evidence to support it. In fact, it is impossible to know how many defendants would receive a lower sentence. What can be known is that a con-

secutive sentence order unlawfully deprives every person who serves his state sentence first of the opportunity to persuade the BOP to credit his time served against his federal sentence. That systemic denial of the opportunity to obtain a reduced sentence requires correction.

The fallacy in the Government's position is illustrated by the following example. Suppose courts throughout the country were imposing two-year mandatory minimum sentences based on what the government conceded was a misreading of federal law. In that situation, it would be impossible to know how many defendants would receive sentences of less than 24 months if the district courts had been afforded the discretion to impose them. Yet that uncertainty could not possibly justify tolerating the continuance of that illegal practice. The same is true here.

The Government also asserts that petitioner himself is unlikely to obtain relief. *Id.* at 11-12. But that too is pure speculation. There is no way to know what the BOP would do if it were permitted to consider petitioner's application. The Government's one-sided account is no substitute for the BOP's consideration of all the relevant facts. *Id.* at 10-11.

For example, in considering petitioner's "history and characteristics," 18 U.S.C. § 3621(b)(3), the BOP would not be limited to the government's slanted account; it would also learn that (i) petitioner's mother abandoned him when he was 12, placing him in a boys' "ranch," Petitioner's Presentence Report (PSR) ¶ 49; (ii) petitioner was sexually abused for the next five years by a man who eventually received a life

sentence for his crimes, *id.* ¶ 50; (iii) petitioner suffered from severe depression at the time of his federal offense of possessing a firearm as a convicted felon, *id.* ¶¶ 60-63; (iv) petitioner "clearly demonstrated acceptance of responsibility for his [federal] offense," *id.* ¶ 24; and (v) petitioner has sought and received medication to treat his "Major Depressive Disorder," *id.* ¶ 64. In assessing "the nature and circumstances of petitioner's offense," 18 U.S.C. § 3621(b)(2), the BOP would consider many of those same factors. It would also take into account that petitioner's federal offense involved "no identifiable" individual victim. PSR ¶ 21.

The Government's account is not only one-sided, but premature. In making its determination, the BOP would certainly consider how petitioner's confinement in state prison affected his suitability for release, a determination that cannot be made until petitioner completes his state sentence in 2011. BOP Program Statement 5160.05, *Designation of State Institution for Service of Federal Sentence* § 8(a) (Jan. 16, 2003). Another factor that cannot be determined until then is whether the resources of available federal facilities would argue in favor of petitioner's release. 18 U.S.C. § 3621(b)(1).

In arguing that petitioner would have only a slight chance of obtaining relief, the Government claims that the BOP would not credit the time petitioner served on his mischief offense. Opp. 11. But even if that were so, it would not affect petitioner's request for credit for the time served on his assault conviction. And that time is sufficient by itself to entirely eliminate petitioner's two-year federal sentence.

With respect to the time served for assault, the sole argument the Government makes is that petitioner's criminal history points would count against him. *Id.* at 12. That argument not only ignores all the other relevant circumstances discussed above; it also ignores the circumstances of petitioner's criminal history. The criminal history relied on by the Government consists of two offenses petitioner committed at age 18, the year he left the ranch at which he was sexually abused. One was for shoplifting a camera, pregnancy test, and photo paper refill; the other was for shooting at a building's windows with "a BB gun." PSR ¶¶ 37-38. It is implausible that the BOP would view those two relatively minor offenses that petitioner committed when he was 18 as precluding release if it were disposed to release petitioner based on other factors. And that does not even account for the possibility that those offenses may already have been factored into petitioner's sentence for assault, a circumstance that would make them even less relevant to the BOP's determination.

3. The only other argument the Government offers against review is that its own efforts to advise district courts not to impose consecutive sentences and to recommend review en banc in four circuits will be sufficient to resolve the issue. Even if the Government's efforts were ultimately successful, it could only be after an enormous expenditure of resources and extended period of time. There is no reason to prefer that drawn-out, resource-intensive solution to the much more efficient one of a single decision by this Court ending the practice. Why the Government objects to the latter approach is mystifying.

Furthermore, the Government's efforts in the district courts have been an embarrassing failure. The Government asserts that since it advised U.S. Attorneys' Offices that they should urge district courts not to impose consecutive sentences, it "understands" the district courts' practice of sentencing defendants unlawfully has "generally changed." Opp. 16. In support of that generalization, the Government offers the example of a single judge who has changed his practice. *Id.* at 16-17. The very fact that the Government can cite only one judge who has changed his practice is reason enough to cast serious doubt on the Government's otherwise unsubstantiated generalization.

And the actual *evidence*—as opposed to the Government's "understanding"—is alarming. After a limited review, we have found that since the Government began advising district courts not to impose consecutive sentences, at least *nine different district court judges in Texas alone* have continued to impose these illegal consecutive sentences. *See* App., *infra*, at 1a-53a.

That is hardly surprising. District court judges who view consecutive sentences as a wise and permissible practice are unlikely to change their view based on a prosecutor's say so. As one district judge stated colorfully in response to a prosecutor's objection to a consecutive sentence: "I don't care. I'm well aware of that U.S. Attorney policy; and I haven't li[sten]ed to it before, especially because statutorily I have the authority to do so." App. at 42a.

This illegal practice persists for another reason. While the Government certainly may desire and ex-

pect that all U.S. Attorneys would follow national advice, the unfortunate reality, as the Government well knows, is otherwise. It will come as no surprise to anyone experienced with the relationship between the Department of Justice and U.S. Attorneys that since the Department provided its guidance, several prosecutors have simply ignored it, and have stood silently by while district court judges imposed illegal consecutive sentences. *See* App. at 7a-8a, 46a-47a, 50a-51a.

The real lesson of the recent district court experience is not that the practice is abating, as the Government asserts, but rather that numerous district court judges are continuing to engage in this practice and will continue to do so until a higher court directs them to stop. And these judges, unlike the Government, obviously do not believe they are doing something with little practical impact. They persist in this practice despite the Government's objections because they believe the practice results in longer sentences.

4. While the Government's district court effort has been a dismal failure, its en banc effort has not even gotten off the ground. The Government insists that it has "taken active steps" to encourage en banc review of an "appropriate case" (Opp. 12-13), but that is true only if "active steps" means "no steps at all." Since the issuance of its January advice to U.S. Attorneys, the Government has had at least 20 opportunities to recommend either initial consideration

or rehearing en banc. The Government *has not done so once.*[1]

The Government chafes at petitioner's observation that it is by now clear that the Government will never recommend en banc review. Opp. 15. What is telling, however, is that the Government still refuses to describe a single situation in which it would recommend en banc review. There is a reason for that. The Government believes every real case falls into one of two categories: (1) cases where the state court might somehow countermand the federal court's consecutive sentence order, and (2) cases where BOP might give the same consecutive sentence anyway.

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[1] *See United States v. Barron*, No. 09-10166, 2009 WL 2514011 (5th Cir. Aug. 18, 2009); *United States v. Aguilar-Mendez*, No. 08-11204, 2009 WL 2512852 (5th Cir. Aug. 18, 2009); *United States v. Mancilla-Lopez*, No. 08-11092, 2009 WL 2512850 (5th Cir. Aug. 18, 2009); *United States v. Garcia-Quiroz*, No. 09-10051, 2009 WL 2514139 (5th Cir. Aug. 18, 2009); *United States v. Clinton*, No. 08-11007, 2009 WL 2512834 (5th Cir. Aug. 18, 2009); *United States v. Ortiz-Coca*, No. 08-11055, 2009 WL 2512847 (5th Cir. Aug. 18, 2009); *United States v. Solis*, No. 08-11216, 2009 WL 2512854 (5th Cir. Aug. 18, 2009); *United States v. Collier*, No. 08-11071, 2009 WL 2513465 (5th Cir. Aug. 18, 2009); *United States v. Diaz*, No. 08-10877, 2009 WL 1687805 (5th Cir. June 16, 2009); *United States v. Ordonez*, No. 08-10752, 2009 WL 1577689 (5th Cir. June 5, 2009); *United States v. Garcia-Espinoza*, 325 F. App'x 380 (5th Cir. 2009); *United States v. Lowe*, 312 F. App'x 836 (8th Cir. 2009) (plain error); Pet. App. 4a-5a; *United States v. Farris*, 312 F. App'x 698 (5th Cir. 2009); *United States v. Scott*, 311 F. App'x 703 (5th Cir. 2009); *United States v. Valenciano-Espinoza*, 311 F. App'x 696 (5th Cir. 2009); *United States v. Maden*, 311 F. App'x 695 (5th Cir. 2009); *United States v. Garcia*, 310 F. App'x 707 (5th Cir. 2009); *United States v. Jochum*, 310 F. App'x 697 (5th Cir. 2009); *United States v. Rollins*, 552 F.3d 739 (8th Cir. 2009).

And the Government regards both categories as inappropriate vehicles for review.

The chimerical nature of the Government's en banc effort is confirmed by the conspicuous absence of any statement in its guidance to U.S. Attorneys that an appropriate case should be identified for en banc review. And in the two court of appeals cases in which the Government promised that it would someday recommend en banc review in an appropriate case—just not that one, as always—the Government simultaneously stated that the issue has "little practical impact." Response of the United States to Pet. for Hearing En Banc, *United States v. Garcia-Espinoza*, No. 08-10775, at 18 (5th Cir. Mar. 4, 2009); *see* Response of the United States to Pet. for Reh'g En Banc, *United States v. Lowe*, No. 08-2304, at 8 (8th Cir. Apr. 1, 2009) (arguing consecutive-sentence order had "no practical effect" given BOP discretion). It is difficult to see how the Government can simultaneously contend in an en banc submission that an issue has little practical impact and yet satisfies the "exceptional importance" standard for en banc review. Fed. R. App. P. 35(a)(2).

As one would expect given the Government's practice, two circuits, the Fifth and the Eighth, have denied en banc review. *See* Pet. App. 7a-8a (*United States v. Garcia-Espinoza*, No. 08-10775); Order, *United States v. Lowe*, No. 08-2304 (Aug. 31, 2009). The Government asserts both cases involved vehicle problems. But at least in the case of the Fifth Circuit, that assertion is meritless. There, the Government claimed the issue was moot because the defendant had begun to serve his federal sentence. But as the two judges on the panel who addressed the Gov-

ernment's mootness claim made clear, the case was not moot, because if the court vacated the defendant's consecutive sentence, he could have sought credit for his state sentence from the BOP. *United States v. Garcia-Espinoza*, 325 F. App'x 380, 382 (5th Cir. 2009) (Owen, J., concurring). That case, in other words, was no more moot than this one, which is undeniably live. The only reasonable explanation for the denial of en banc is that the Fifth Circuit did not view the issue as sufficiently important to warrant such consideration. That is consistent with the Government's insistence in its brief in that case that the issue has "little practical impact."

It is time for this shell-and-pea game to end. Criminal defendants with vital liberty interests at stake should not have to file a continuous stream of futile en banc petitions in the courts of appeals, all of which will be opposed by the Government, before this Court finally terminates this unlawful practice.

5. Finally, the Court's prior denials of certiorari on this issue (Opp. 7-8) are irrelevant here. Many occurred before the Government confessed error on the issue. Others involved real vehicle issues, such as defendants who failed to object to the illegal sentence in the district court. None involved a defendant, like petitioner here, who could demonstrate in stark terms that he would directly and materially benefit from a favorable decision by this Court. The combination of a 4-4 circuit split, a concededly illegal practice, the harmful effects on the administration of justice of allowing such a practice to persist, and a person condemned to serve two additional years of imprisonment that could potentially be avoided makes review imperative now.

CONCLUSION

The petition for a writ of certiorari should be granted and the case either set for plenary briefing and argument or summarily reversed.

Respectfully submitted,

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September 9, 2009

APPENDIX

APPENDIX A

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	**JUDGMENT IN A CRIMINAL CASE**
v.	Case number: 4:08-CR-098-Y (28)
JIMMY H. PORTILLO	U.S. marshal's no.: 38133-177 J. Michael Worley, assistant U.S. attorney Paul Snell, attorney for the defendant

******

Sentence imposed August 10, 2009

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed August 11, 2009

IMPRISONMENT

The defendant, Jimmy H. Portillo, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 28 months on each of counts ninety-six, ninety-seven, and ninety-eight of the ninety-eight count superseding

indictment. The sentence imposed in each count shall run consecutively to the others, for an aggregate term of imprisonment of 84 months. This sentence shall be served consecutively to any sentence imposed by Tarrant County, Texas, Criminal District Court No. 2, in cause no. 0502094.

The defendant is remanded to the custody of the United States marshal.

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	**JUDGMENT IN A CRIMINAL CASE**
v.	Case number: 4:08-CR-010-Y (01)
RAFAEL RODRIGUEZ-DURAN	U.S. marshal's no.: 38110-177 Joshua Burgess, assistant U.S. attorney Matthew Kyle Belcher, attorney for the defendant

******

Sentence imposed April 13, 2009

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed April 14, 2009

IMPRISONMENT

The defendant, Rafael Rodriguez-Duran, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 57 months on count one of the one-count indictment. The sentence imposed in this case shall run

consecutively to any sentence imposed in Case Nos. 19858OR, 198579R, 197989D, and 196364D in Criminal District Court No. 2, Tarrant County, Texas

The defendant is remanded to the custody of the United States marshal.

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	**JUDGMENT IN A CRIMINAL CASE**
v.	Case number: 4:09-CR-030-Y (01)
ELIZZ GARCIA	U.S. marshal's no.: 38222-177 Robert A. Klinck, assistant U.S. attorney Peter Michael Fleury, attorney for the defendant

******

Sentence imposed August 10, 2009

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed August 11, 2009

IMPRISONMENT

The defendant, Elizz Garcia, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 60 months on count one of the one-count information. The sentence shall run consecutively to any sentence imposed by the State

of Texas arising out of the violation(s) of the law for which she was arrested on July 12, 2009, by the Irving, Texas, police department (e.g., forgery of a financial instrument and/or identity theft).

The Court recommends that the defendant be placed in the Institution Residential Drug Abuse Treatment Program, if qualified.

The defendant is remanded to the custody of the United States marshal.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA
CRIMINAL ACTION NO. 4:09-CR-030-Y
V.

Fort Worth, Texas
ELIZZ GARCIA August 10, 2009

TRANSCRIPT OF PROCEEDINGS
(Sentencing Hearing)
BEFORE THE HONORABLE TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

******

THE COURT: Thank you.

The sentence is amended to read 60 months. This sentence shall run consecutively to any sentence imposed by the state of Texas arising out of the violations of the law for which she was arrested on July 12, 2009 by the Irving, Texas Police Department, for instance, forgery of a financial instrument and/or identity theft. I recommend that Ms. Garcia be enrolled in the comprehensive drug treatment program offered by the Bureau of Prisons.

******

I have now stated the sentence. I call upon the parties to indicate any legal reason why sentence may not be imposed as stated?

MR. KLINCK: None from the government, Your Honor.

MR. FLEURY: We have no objection, Your

Honor. I didn't know if I heard whether you made the recommendation for RDAP or whether you decided not to do that.

THE COURT: I did, I believe.

MR. FLEURY: Okay.

THE COURT: If I didn't, I do now.

MR. FLEURY: I apologize.

THE COURT: That's all right.

Sentence is then imposed as stated.

Ms. Garcia, you have the right to appeal the sentence that I have imposed. You also -- is there something else?

MR. FLEURY: Yes, there is, Your Honor. Again, I guess I wasn't listening carefully enough.

We always object, and we object in this case to the Court running this case consecutive to an as yet imposed state court sentence.

THE COURT: Right. Your objection is overruled.

Ms. Garcia, you have the right to appeal the sentence that I have imposed. You also have the right to apply for leave to appeal in forma pauperis if you're unable to pay the cost of the appeal.

Do you have any questions, ma'am?

DEFENDANT: No, Your Honor.

THE COURT: You're remanded to the custody of the United States Marshal. Good luck to you.

(End of proceedings, 11:00 a.m.)

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	**JUDGMENT IN A CRIMINAL CASE**
v.	Case number: 4:08-CR-127-Y (1)
ERIC WAYNE BARRON	U.S. marshal's no.: 38056-177 Shawn Smith, assistant U.S. attorney Christopher Curtis, attorney for the defendant

******

Sentence imposed January 26, 2009

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed January 27, 2009

IMPRISONMENT

The defendant, Eric Wayne Barron, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 29 months on count one of the one-count indictment. The sentence imposed shall run consecutively to any sentence

imposed by the State of Texas in case numbers 1090653 and 1090987 in the 213th Judicial District Court, Tarrant County, Texas.

The Court recommends that the defendant be placed in the Institution Residential Drug Abuse Treatment Program, if qualified.

It is ordered that the psychological evaluation of the defendant prepared by Jim Womack, Ph. D., for the use of the Court in this case, be provided to the Bureau of Prisons, immediately after the judgment and commitment order is signed and entered.

The defendant is remanded to the custody of the United States marshal.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	(	Number 4:08-CR-127-Y
Plaintiff,	(	
vs.	(	
	(	
ERIC WAYNE BARRON	(	January 26, 2009
Defendant	(	

Sentencing
Before the Honorable Judge Terry Means

******

It is the judgment of the Court that the Defendant Eric Wayne Barron in Cause Number 4:08-127-Y be committed to the custody of the Federal Bureau of Prisons for a period of twenty-nine months. This shall run consecutively to the sentence imposed by the State of Texas in Case Numbers 1090653 and 1090987 in the 213th Judicial District Court of Tarrant County.

******

MR. SMITH: The government objects according to department policy to any consecutive nature of the sentence to any pending state matter and also the sentence below the guideline range.

THE COURT: Your policy is objection to a consecutive sentence to a state matter?

MR. SMITH: Yes, your Honor. That is a fairly new Department of Justice policy.

THE COURT: Could you forward me a copy of that? I wasn't aware of that.

MR. SMITH: I believe Fifth Circuit said it's okay.

THE COURT: If it's a state case but not federal.

MR. CURTIS: Your Honor, I needed to object on the same grounds. There is an issue before the Fifth Circuit. I believe it's going up to the Supreme Court on the constitutionality of ordering an unimposed state sentence to run consecutively to an imposed federal sentence.

THE COURT: Yeah, but I'm not ordering the state case should run consecutive to this. I'm ordering this run consecutive to it. I'll be interested in seeing that policy and following the course of that case. I wasn't aware that was on appeal. Objections are overruled. Sentence is imposed as stated.

APPENDIX B

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	§	Case Number: 4:08-CR-147-A(04)
v.	§	
JOSHUA LOHMANN	§	

JUDGMENT IN A CRIMINAL CASE

******

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 210 months. The sentence shall run consecutively to any sentence imposed by Tarrant County Criminal District Court No. 2, in Case No. 1109508D, and any sentence imposed in the 371st District Court of Tarrant County in Case No. 1005000D. The sentence shall run concurrently to any sentence imposed in Tarrant County Criminal District Court No. 2, in Case Nos. 1109507D and 1107350D.

******

Signed this the 3rd day of March, 2009.

/s/ John McBryde
JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	§	Case Number: 4:08-CR-147-A(01)
v.	§	
CORY MITCHEL	§	

JUDGMENT IN A CRIMINAL CASE

******

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 170 months. The sentence shall run consecutively to any sentence imposed by Tarrant County Criminal District Court No. 3, in Case Nos. 1121882 and 1122144; and consecutively to any sentence imposed in Tarrant County Criminal District Court No. 10, in Case No. 1115727.

The defendant is remanded to the custody of the United States Marshal.

******

Signed this the 3rd day of March, 2009.

/s/ John McBryde
JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA,	§	Case Number: 4:08-CR-147-A(03)
v.	§	
MELINDA BARNEY	§	

JUDGMENT IN A CRIMINAL CASE

******

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 136 months. The sentence shall run consecutively to the sentence imposed in the 266th District Court of Erath County in Case Nos. CR12745 and CR12832, and any sentence imposed in the 355th District Court of Hood County in Case No. CR10673.

******

Signed this the 29 day of May, 2009.

/s/ John McBryde
JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

APPENDIX C

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

JEROME LORENZO WILLIAMS

JUDGMENT IN A CRIMINAL CASE

Case number: 3:09-CR-033-n (01)

USM Number: 38531-177

Douglas A. Morris
Defendant's Attorney

******

JULY 6, 2009

/s/ David C. Godbey
Signature of Judge

U.S. DISTRICT JUDGE
DAVID C. GODBEY
Name and Title of Judge

7/10/09
Date

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

72 (Seventy Two) Months on Counts 1, 2 and 3 to run concurrently. This sentence shall be served consecutively to any sentence imposed in Case No. CR07-1472-AB pending in Chatham County Superior Court in Savannah, Georgia.

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

DERRICK LAMONT MONEY

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-327-N(01)

USM Number: 38454-177

Sam Ogan
Defendant's Attorney

******

June 15, 2009

/s/ David C. Godbey
Signature of Judge

U.S. DISTRICT JUDGE
DAVID C. GODBEY
Name and Title of Judge

6/23/09
Date

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to

United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **210 (Two Hundred Ten) Months on counts 1 and 2 to run concurrently. This sentence shall run consecutively to state cases MB0754777, Case No. MB0763480, Case No. F-0687177, Case No. F-0771609 and Case No. F-0738389. The sentence shall be served concurrently to state Case No. F-085598, Case No. F-0855984, Case No. F-0861048 and Case No. F-0861049.**

APPENDIX D

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

COLBY LAWRENCE RICHARDSON

JUDGMENT IN A CRIMINAL CASE

Case number: 3:09-CR-019-L(01)

USM Number: 38565-177

Charles M. Bleil
Defendant's Attorney

******

/s/ Sam A. Lindsay
Signature of Judge

Sam A. Lindsay

United States District Judge
Name and Title of Judge

August 18, 2009
Date

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to

United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Fifteen (15) months on Count I and Sixty (60) months on Count 2, to be served consecutively to each other, for a total term of Seventh-five (75) months. Count I shall run concurrently to any sentence received in Case No. F-0839224, which is pending in the 292nd Judicial District Court, Dallas, Texas. Count 2 shall run consecutively to any sentence imposed in the State case.**

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

BILLY REED

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-301-L(03)

USM Number: 38466-177

Dean A. Sanders
Defendant's Attorney

******

/s/ Sam A. Lindsay
Signature of Judge

Sam A. Lindsay

United States District Judge
Name and Title of Judge

July 6, 2009
Date

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant

is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Eighteen (18) months. This sentence shall run consecutively to any State Court sentence that might be imposed.**

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

JUAN ANTONIO GONZALEZ-ESCOBEDO

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-336-L (01)

USM Number: 38436-177

Charles M. Bleil
Defendant's Attorney

******

/s/ Sam A. Lindsay
Signature of Judge

Sam A. Lindsay

United States District Judge
Name and Title of Judge

March 3, 2009
Date

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant

is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Seventy (70) months. The sentence shall run consecutively to the Defendant's cases of probation revocation for Aggravated Assault, Cases No. F-0560893, pending in Dallas County Criminal District Court 7, Dallas, Texas; and Unlawful Carrying of a Weapon Case No. MA0862175, pending in Dallas County Criminal Court 1, Dallas, Texas.**

APPENDIX E

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

JAMES GAYFORD

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-350-D(01)

USM Number: 38483-177

Charles M. Bleil
Defendant's Attorney

******

JULY 2, 2009

/s/ Sidney A. Fitzwater
Signature of Judge

SIDNEY A. FITZWATER
CHIEF JUDGE
Name and Title of Judge

July 6, 2009
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be

imprisoned for a total term of: **eighty-four (84) months.**

It is ordered that the sentence shall run concurrently with any sentence imposed in Case No. F-0825494 by Dallas County Criminal District Court No. 5, and shall run consecutively to any sentences imposed in Case Nos. CR-70579-F, 72-042307, and 72-042313 by the 18th Judicial District Court of Point Coupce Parish, Louisiana.

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

TRACY JOHNSON

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-172-D(01)

USM Number: 38385-177

Douglas A. Morris
Defendant's Attorney

******

/s/ Sidney A. Fitzwater
Signature of Judge

SIDNEY A. FITZWATER
CHIEF JUDGE
Name and Title of Judge

June 15, 2009
Date

******

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **fifty-one months on counts 1 and 4**

It is ordered that the sentences on counts 1 and 4 shall run concurrently with one another, except as to the mandatory special assessments, which shall run consecutively.

It is ordered that the sentence in this case shall run consecutively to any sentence that may be imposed in Case Nos. F-0872180, F-0871918, and F-0852631 by the 204th Judicial District of Dallas County, Texas.

In The United States District Court

FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA Government,	3:08-CR-172-D
VERSUS	DALLAS, TEXAS
TRACY JOHNSON Defendant.	JUNE 12, 2009

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE SIDNEY A. FITZWATER

UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

FOR THE GOVERNMENT:	JOHN BOYLE HECTOR VALLE UNITED STATES DEPARTMENT OF JUSTICE NORTHERN DISTRICT OF TEXAS

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It is ordered that the sentence in this case shall run consecutively to any sentence that may be imposed in case numbers F0872180, F0871918, and F0852631 by the 204th judicial District court of Dallas county, Texas.

******

THE COURT: Okay. Mr. Morris, do you have anything further at this time?

MR. MORRIS: Yes, Your Honor.

It's my understanding that there's same fluidity, if you will, in the law, in the consecutive versus concurrent arena, and I'm not sure about it enough to tell you right off the top of my head, but I'm going to go ahead and object to the consecutive imposition of the sentence, just because I'm not quite certain what the law is on that, just so I protect Mr. Johnson's right in that area.

THE COURT: I'll note your objection and overrule it.

I think, Mr. Morris, what you may be thinking of is there -- refers to ordering a federal sentence served consecutively to another federal sentence, as opposed to a state sentence, where I think the law is still settled.

But in any event, you have the right to object and you're being careful to object --

MR: MORRIS: Thank you.

THE COURT: -- and I overrule you.

MR. MORRIS: The only other thing I would ask

is that I -- I noted in regards to the -- the assertions of ineffective assistance, and I did not want to present anything today, I did not want that to seem as a waiver for perpetuity purposes. In the case of we're asked to answer those questions on appeal or habeas motion or something at that point, I wouldn't want it to be seeming like our office has waived our rights forever into answering those assertions.

APPENDIX F

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

MANUEL MENDOZA

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-285-M (01)

USM Number: 38419-177

John M. Nicholson
Asst. Federal Public Defender
Defendant's Attorney

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May 15, 2009

/s/ Barbara M.G. Lynn
Signature of Judge

BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

May 21, 2009
Date

******

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **ONE HUNDRED AND TWENTY (120) MONTHS. This term of imprisonment shall run concurrent with any sentence received in the following Case Nos. F-0855911, F-0855912 F-0855913, which are all pending in the 283rd Judicial District Court in Dallas, TX, and are related to the instant offense. This term of imprisonment shall run consecutive with any sentence received in the following Case Nos.: F-0773833, which is pending in the 283rd Judicial District Court in Dallas, TX, and any sentence received in Case No.: F-945579 and F-0159047, as these cases are unrelated to the instant offense.**

APPENDIX G

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

QUINTON DAUGHTRY

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-197-P (01)

USM Number: 38282-177

Michael Todd, Esq.
Defendant's Attorney

******

/s/ Jorge A. Solis
Signature of Judge

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

June 11, 2009
Date

******

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors

set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **SIXTY-FOUR (64) MONTHS to run consecutive to any sentence imposed in state Case Nos. MA0664277, F-0714527 and F-0755750.**

APPENDIX H

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA,

v.

EDGAR SOSA-LOPEZ

JUDGMENT IN A CRIMINAL CASE

Case number: 3:08-CR-310-O (01)

U.S. Marshal's No.: 38431-177
Cara Foos Pierce, Assistant U.S. Attorney
Laura Harper, Attorney for the Defendant

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Sentence imposed February 26, 2009,

/s/ Reed O'Connor
REED O'CONNOR
DISTRICT JUDGE

Signed February 27, 2009

IMPRISONMENT

The defendant, EDGAR SOSA-LOPEZ, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of EIGHT (8) months on Count One of the One-Count Indictment filed on October 22, 2008. This sentence is to run consecutive to any sentence the defendant may receive in the Possession of a Controlled Substance case pending in Carrollton, Texas.

The defendant is remanded to the custody of the United States Marshal.

APPENDIX I

United States District Court

WESTERN DISTRICT OF TEXAS
Del Rio Division

UNITED STATES OF AMERICA

DR-08-CR-715

v.

DEL RIO, TEXAS
MARCH 12, 2009

ISRAEL VARGAS-SOLIS

SENTENCING

BEFORE THE HONORABLE ALIA MOSES LUDLUM

UNITED STATES DISTRICT JUDGE

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FOR THE UNITED STATES OF AMERICA:
UNITED STATES ATTORNEY'S OFFICE
KATHRYN RISINGER
Assistant U.S. Attorney
Third Floor, U.S. Courthouse
111 East Broadway
Suite 300
Del Rio, Texas 78840

FOR THE DEFENDANT:
FRANK MORALES

OFFICE OF THE FEDERAL PUBLIC DEFENDER
2205 Veterans Boulevard
Suite A-2
Del Rio, Texas 78840

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It is therefore the Order and the Judgment of the Court that the Defendant Israel Vargas-Solis is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 60 months with credit for the time he has been in custody since June 28th of 2008; that the sentence is to run consecutively to the two pending state cases that have warrants outstanding; that upon release from imprisonment, Mr. Vargas, you will be placed on a term of supervised release of three years; that while on supervised release you shall comply with all the standard conditions of supervision adopted by the Court on May 27th, 2004.

One of your conditions is that you are not to return to the United States illegally. Mr. Vargas, for your own good do not return to the United States illegally for any reason at anytime at any place. Do you understand?

THE DEFENDANT: Yes.

THE COURT: The Court finds that there is insufficient evidence to indicate that the defendant has the ability to pay a fine; therefore, no fine will be imposed. However, the Court will Order that the defendant shall pay to the United States a special assessment of $100 which shall be due immediately. The Court will Order that the Presentence Report

and all related documents be sealed and be made part of the record for appellate purposes. And I advise you, Mr. Vargas, you do have the right to appeal your sentence. Anything further, Ms. Risinger?

MS. RISINGER: Your Honor, the Government simply objects to the running of the sentences consecutively --

THE COURT: I don't care.

MS. RISINGER: -- to the State cases, just for the record.

MR. MORALES: I join the objection, Your Honor.

THE COURT: I don't care. I'm well aware of that U.S. Attorney policy; and I haven't licensed to it before, especially because statutorily I have the authority to do so.

MS. RISINGER: I understand.

THE COURT: And this is not saying that the State will do it. I don't know what the State is going to do. They might decide to run theirs concurrently, so I don't know.

Okay. Mr. Morales, do you need to speak to your client for a moment?

MR. MORALES: I do.

THE COURT: Okay. Mr. Vargas, just have a seat so your attorney can speak to you.

MR. MORALES. And we have nothing further.

THE COURT: Okay.

(COUNSEL CONFERS WITH DEFENDANT.)

United States District Court

WESTERN DISTRICT OF TEXAS
Del Rio Division

UNITED STATES OF AMERICA

v.

Case Number: DR-08-CR-715(1)-AML

ISRAEL VARGAS-SOLIS

USM Number: 22315-280

Defendant.

JUDGEMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

******

Signed this the 12th day of March, 2009.

/s/ Alia Moses Ludlum
ALIA MOSES LUDLUM
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months with credit for time served since June 28, 2008, pursuant to 18

U.S.C. § 3584(a).

The Court makes the following recommendations to the Bureau of Prisons:

That the State officials run their sentences consecutively to the federal sentence.

The defendant shall remain in custody pending service of sentence.

United States District Court

WESTERN DISTRICT OF TEXAS
Del Rio Division

UNITED STATES OF AMERICA

v.

FRANCISCO CRUZ-GONZALEZ

DR-08-CR-981

DEL RIO, TEXAS
APRIL 8, 2009

SENTENCING

BEFORE THE HONORABLE ALIA MOSES LUDLUM

UNITED STATES DISTRICT JUDGE

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APPEARANCES

FOR THE UNITED STATES OF AMERICA:
UNITED STATES ATTORNEY'S OFFICE
CETFSTE BLACKBURN
Assistant U.S. Attorney
Third Floor, U.S. Courthouse
111 East Broadway
Suite 300

Del Rio, Texas 78840

FOR THE DEFENDANT:
FRANCES CUSACK
OFFICE OF THE FEDERAL PUBLIC DEFENDER
2205 Veterans Boulevard
Suite A-2
Del Rio, Texas 78840

******

Okay. For everyone else: For Mr. Zarazua, it is the Order and the Judgment of the Court that the Defendant Silverio Zarazua-Oliva is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 18 months with credit for the time he has been in custody since August 19, 2008, to run consecutively to his pending state cases.

******

For Mr. Gonzalez-Rodriguez, it is the Order and the Judgment of the Court that the Defendant Valentin Gonzalez-Rodriguez is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a team of 18 months with credit for the time he has been in custody since September the15th of 2008 to run consecutively to his pending state indicate.

******

Other than talking to your clients, anything further on any of these cases?

MR. MORALES: No, Your Honor.

MR. PACHECO: No, Your Honor.

MS. DOUENAT: No, Your Honor.

MS. CUSACK: Yes, Your Honor. On behalf of Mr. Cruz-Gonzalez, we object to the running consecutively pending state litigation.

THE COURT: The Court overrules the motion.

Anything, Ms. Norton?

MS. NORTON: Nothing further, Your Honor.

THE COURT: Okay. Anything further, Ms. Blackburn?

MS. BLACKBURN: No, Your Honor.

THE COURT: Okay. All of you have a seat right now so that your attorneys can talk to you for a few minutes.

MS. BLACKBURN: Your Honor, may I be excused?

THE COURT: You may.

(COUNSEL CONFER WITH DEFENDANTS.)

United States District Court

WESTERN DISTRICT OF TEXAS
Del Rio Division

UNITED STATES OF AMERICA

v.

Case Number: DR-08-CR-981(1)-AML
USM Number 24563-280

FRANCISCO CRUZ-GONZALEZ

Defendant.

JUDGEMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

******

Signed this the 8th day of April, 2009.

/s/ Alia Moses Ludlum
ALIA MOSES LUDLUM
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 21 months with credit for time served since September 12, 2008, pursuant to 18 U.S.C. § 3584(a).

The Court makes the following recommendations to the Bureau of Prisons:

That the State officials run their sentences consecutively to the federal sentence. The defendant shall remain in custody pending service of sentence.

(JUNE 8, 2009, OPEN COURT.)

THE COURT: DR-08-CR-911; the United States of America vs. Jose Luis Rodriquez-Mena.

MR. LINDSEY: Herbert Lindsey for the United States Government.

MS. DEL RIO: Bianca Rocha Del Rio on behalf Mr. Rodriguez-Mena. We're ready to proceed.

******

It is therefore the Order and the Judgment of the Court that the Defendant Jose Luis Rodriguez-Mena is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 57 months with credit for the time he has been in custody since August the 21st of 2008; that upon release from imprisonment, Mr. Rodriguez, you will be -- this is going to run consecutive to your pending state cases -- that upon release from imprisonment you will be placed on term of supervised release of three years; that while on supervised release you shall comply with all the standard conditions of supervision adopted by the Court on May 27th, 2004.

One of your conditions is that you are not to return to the United States illegally. Mr. Rodriguez, do not return to the United States illegally for any reason at any time at any place. Do you understand?

THE DEFENDANT': Yes.

THE COURT: The Court finds that there is insufficient evidence to indicate that the defendant has the ability to pay a fine; therefore, no fine will be imposed. However, the Court will Order that the

defendant shall pay to the United States a special assessment of $100 which shall be due immediately. The Court will Order that the Presentence Report and all related documents be sealed and be made part of the record for appellate purposes. And I advise you, Mr. Rodriguez, you do have the right to appeal your sentence. Anything further, Mr. Lindsey?

MR. LINDSEY: No, ma'am, Your Honor.

THE COURT: Ms. Del Rio, anything further?

MS. DEL RIO: Nothing further, Your Honor.

THE COURT: Mr. Rodriguez, just have a seat right now so that your attorney can talk to you one more time.

(COUNSEL CONFERS WITH DEFENDANT.)

United States District Court

WESTERN DISTRICT OF TEXAS
Del Rio Division

UNITED STATES OF AMERICA

v.

Case Number: DR-08-CR-911(1)-AML
USM Number 24177-280

JOSE LUIS RODRIGUEZ-MENA

Defendant.

JUDGEMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

******

Signed this the 8th day of June, 2009.

/s/ Alia Moses Ludlum
ALIA MOSES LUDLUM
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody Of the United States Bureau of Prisons to be imprisoned for a term of 57 months with credit for time served since August 21, 2008, pursuant to 18

U.S.C. § 3584(a).

The Court makes the following recommendations to the Bureau of Prisons:

That the State officials run their sentences consecutively to the federal sentence. The defendant shall remain In custody pending service of sentence.